No. 12378

In the United States Court of Appeals for the Ninth Circuit

LOS ANGELES BUILDING AND CONSTRUCTION TRADES COUNCIL, AND ITS AGENT LLOYD A. MASHBURN; MILLWRIGHT AND MACHINERY ERECTORS, LOCAL 1607, OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, A. F. L., AND ITS AGENT HERMAN BARBAGLIA, APPELLANTS

v.

HOWARD F. LEBARON, REGIONAL DIRECTOR OF THE TWENTY-FIRST REGION OF THE NATIONAL LABOR RELATIONS BOARD, FOR AND ON BEHALF OF THE NATIONAL LABOR RELATIONS BOARD, APPELLEE

ON APPEAL FROM AN ORDER OF THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

BRIEF FOR APPELLEE

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INDEX

AUTHORITIES CITED

Cases—Continued. Page

Cases—Continued. Page

Statutes:

Miscellaneous:

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JURISDICTION

This is an appeal from an order of the United States District Court for the Southern District of California granting a petition filed on behalf of the National Labor Relations Board, herein called the Board, by Howard F. LeBaron, the Regional Director for the Twenty-first Region of the Board, pursuant to Section 10 (l) of the National Labor Relations

Act, as amended (61 Stat. 136; 29 U. S. C., Supp. II, Sec. 141 *et seq.*), herein called the Act. The order of the district court, which was entered on June 10, 1949, enjoins appellants from engaging in certain unfair labor practices as defined by Section 8 (b) (4) (D) of the Act, pending final adjudication of the matter by the Board (R. 121–123).[1] Notice of appeal to this Court was filed July 8, 1949 (R. 123–124). The opinion of the court below (R. 83–104) is reported at 84 F. Supp. 629.

Appellants Los Angeles Building and Construction Trades Council and Millwright and Machinery Erectors, Local 1607, of the United Brotherhood of Carpenters and Joiners of America, A. F. of L., herein called Council and Millwrights, respectively, are labor organizations within the meaning of the Act, Council being comprised of 18 labor organizations, including Millwrights, engaged in the building trades industry, and both have their principal offices within the Southern District of California (R. 40, 51). Appellants Lloyd A. Mashburn and Herman Barbaglia are agents, respectively, of Council and Millwrights within the meaning of the Act (R. 40–41, 51, 218). Appellants Council and Mashburn are engaged within the Southern District of California in promoting and protecting the interests of Council's constituent unions and employee members. Appellants Millwrights and Barbaglia are engaged within the Southern District of California in promoting and protecting the interests of the employee members of Millwrights (*ibid.*).

[1] References to the printed transcript of record are designated "R."

The unfair labor practices charged were committed within the Southern District of California (R. 116–119).

As shown by the petition (R. 2–3), the jurisdiction of the court below was invoked under the provisions of Section 10 (l) of the Act. The jurisdiction of this Court is invoked under Sections 128 and 129 of the Judicial Code (28 U. S. C. 225 and 227).

STATUTE INVOLVED

The statutory provisions primarily involved are Sections 8 (b) (4) (D) and 10 (k) and (l) of the Act. These provisions are set forth hereinafter in the brief (*infra,* pp. 4, 15–16, 18–19).

STATEMENT OF THE CASE

The petition in the court below alleged that Local Lodge 1235 of the International Association of Machinists, hereinafter called Machinists,[2] pursuant to the provisions of the Act, on or about April 15, 1949, filed with the Board a second amended charge, to a charge filed on February 2, 1949, and amended March 8, 1949, alleging that appellants in violation of Section 8 (b) (4) (D) of the Act had engaged in and were engaging in strike action with an object of forcing or requiring Westinghouse Electric Corporation and/or Stone and Webster Engineering Corporation to assign work to members of Millwrights

[2] The International Association of Machinists is an independent labor organization and its above-named local is not affiliated with Council. Machinists is a labor organization within the meaning of the Act and, is engaged in promoting and protecting the interests of its employee members in the Southern District of California (R. 7, 43–44).

which had been assigned to members of Machinists, and that the alleged unfair labor practices were affecting commerce within the meaning of Section 2 (6) and (7) of the Act. The petition further alleged that the charge and amended charges were referred to appellee for investigation; and that, after a preliminary investigation, appellee had reasonable cause to believe that the second amended charge was true and that a Board complaint should issue thereon (R. 2–11). The petition prayed for an injunction enjoining the unfair labor practices pending their final adjudication by the Board (R. 11–13). Appellants answered denying the jurisdiction of the Board and the Court over the dispute, or the commission of unfair labor practices within the meaning of Section 8 (b) (4) (D) of the Act, and claiming that Section 8 (b) (4) (D) of the Act, in any event, violates the First, Fifth, and Thirteenth Amendments of the Constitution of the United States (R. 39–50).

The court below, upon a hearing and due consideration of the petition, return, points and authorities, documentary evidence, affidavits and oral argument of counsel, and upon appellants' failure to comply with the Decision and Determination of Dispute issued by the Board under Section 10 (k) of the Act (see R. 95–96, 118, 125, 229 et seq.),[3]

[3] Section 10 (k) provides that:

"Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (D) of section 8 (b), the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satis-

granted the relief prayed for in the petition (R. 81–104, 112–123).

The evidence before the court below showed the following facts:

In July 1946, Southern California Edison Company, herein called Edison, began the construction of a new steam turbine electric power generating station at Redondo Beach, California, herein called the Redondo station (R. 27, 233–234). Stone and Webster Engineering Corporation, herein called Stone and Webster, was the general contractor (*ibid.*). Some time prior to January 1949, Edison contracted with Westinghouse Electric Corporation, herein called Westinghouse, for three steam turbine generators to be furnished and installed by Westinghouse at the Redondo station (R. 29–30, 234).

Westinghouse is engaged in the manufacture, sale and installation of electrical supplies and equipment. The three generators, valued at approximately $4,800,000, which Westinghouse agreed to install for Edison at the Redondo station, were manufactured at Westinghouse's East Pittsburgh and Lester, Pennsylvania, plants and shipped to the Redondo station. In addition to the plants at East Pittsburgh and Lester, Westinghouse has plants elsewhere in the United States (R. 6–8, 28–30, 55, 232–234). During the year 1948, the Westinghouse plant at East Pitts-

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factory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed."

880610—50——2

burgh, where generators are manufactured, and the one at Lester, where steam turbines are made, each used raw materials valued at in excess of $1,000,000, of which approximately 50 percent originated outside the State of Pennsylvania. During the same period, the manufactured products sold from each of these plants exceeded $1,000,000; the out-of-state sales from the East Pittsburgh plant approximated 90 percent of all sales of the plant and the out-of-state sales from the Lester plant approximated 50 percent of all sales of that plant (R. 29, 232–233).

Edison is a public utility engaged in furnishing electrical energy and services to the Los Angeles and Southern California area. Thirty-nine percent of its output of electrical energy goes to instrumentalities of interstate commerce and concerns engaged in interstate commerce, such as aircraft manufacturers, oil refineries, rubber companies, and steel plants. During the year 1948, Edison purchased raw materials at a cost exceeding $3,400,000, of which 66⅔ percent had their origin outside the State of California. During the same period, approximately 25½ percent of the total power utilized by Edison came from outside the state (R. 5–6, 55, 233).

Stone and Webster is a general contractor engaged mainly in industrial and commercial construction work, such as the construction of steam generator plants, transmission lines, manufacturing plants and paper mills. Its construction activities extend to every state in the United States and to many foreign countries. At the end of the year 1948, the construction it then had in progress had an estimated

completed value of one-third billion dollars (R. 27).

The total cost of constructing and equipping the Redondo station is estimated at in excess of $38,000,000. The estimated cost of equipment is $18,500,000. Of this amount, $12,700,000 is for equipment to be transported from outside the State of California directly to the job site. In May 1949, when the petition for injunctive relief was filed, the units in operation at the Redondo station, which was 75 percent completed, furnished aproximately 15 percent of Edison's total output of electrical energy (R. 27).

The employees on the Redondo station construction were, with one exception, members of unions affiliated with Council (R. 27–28, 234–235).[4] Westinghouse and General Electric Company, the other manufacturer under contract to furnish and install steam-turbine generators at the Redondo station, in their installation work employed, among others, members of Machinists, an unaffiliated union (R. 126–130, 137–138, 155–157, 164–169, 183–185, 196–197, 234–235). A short time before the installation of the second Westinghouse generator was scheduled to commence, representatives of Council and Millwrights attempted to persuade Stone and Webster to have Westinghouse replace the members of Machinists employed by Westinghouse in the installation work with members of Millwrights, a Council affiliate. Stone and Webster disclaimed control over the employment of the Westinghouse generator-installation men, saying that was

[4] Stone and Webster had approximately 550 employees on the job and other contractors had approximately 100 employees on the site (R. 27–28, 235–237).

a Westinghouse responsibility exclusively (R. 219–221, 234–235, 244–250).

On January 31, 1949, Westinghouse began the installation of its second generator on the project (R. 193). Two members of Machinists, among others, were employed in the installation work (R. 166, 185, 235). At the commencement of the job, appellant Barbaglia warned the two Machinists that if they started the job he would "have to take job action" (R. 35) and asked Scanlon, a Westinghouse supervisor, to remove them until the dispute could be straightened out (R. 206–207). Scanlon refused to do so (R. 208).

On the following day, February 1, appellant Washburn approached Budge, another supervisor for Westinghouse, to replace the two Machinists with Millwrights (R. 213). When Budge refused, Washburn also announced that he would "take action" (*ibid.*). On the same day, appellant Barbaglia also informed Supervisor Scanlon that he would "stop the job" unless the Machinists were replaced with Millwrights (R. 160–163).

On February 2, appellant Council, admittedly (see R. 45), called a general strike of all the building trades employees on the Redondo station project (see also R. 32–33, 35–36, 162, 195, 235). As the court below found, the purpose of the strike was to require Stone and Webster and Westinghouse to assign the generator installation work to members of Millwrights rather than to members of Machinists employed by Westinghouse (R. 86, 117). All of the approximately 650 employees, except the two Machinists em-

ployed by Westinghouse, walked off the job, and, except for that of the latter, all work was suspended on the project (R. 36, 195, 235). On February 10, Edison requested Westinghouse to suspend its installation work until the dispute between Millwrights and Machinists was resolved (R. 32–34, 79–81). When Westinghouse acquiesced in the request and withdrew its Machinists, the other employees, members of unions affiliated with Council, returned to work on the project (R. 34, 235).

However, at the time of the hearing below, no further installation work had been done on the Westinghouse generator (see R. 235). Moreover, on April 11, 1949, Council pulled the 6 riggers employed by Westinghouse [5] to unload its third generator destined for installation on the project off the job (R. 47, 30–32). As the court below found, this action was part of the continuing pressure being exerted by appellants against Westinghouse to force the assignment of the generator installation work to members of Millwrights rather than to members of Machinists (R. 86, 117).

On May 11, 1949, the Board handed down its Decision and Determination of Dispute in the Section 10 (k) proceeding (*see supra,* p. 4), in which it held that appellants were not lawfully entitled to force or require Westinghouse to assign the generator installation work at the Redondo station to members of Millwrights rather than to employees of Westinghouse who are members of Machinists (R. 241). The Board's decision and determination was received in

[5] Members of Local No. 433, International Association of Bridge, Structural and Ornamental Iron Workers, affiliated with Council.

evidence at the hearing in the court below (see R. 228 *et seq.*).

Upon the foregoing facts, the court below found there was reasonable cause to believe that appellants had engaged in unfair labor practices within the meaning of Section 8 (b) (4) (D) of the Act, affecting commerce within the meaning of Section 2 (6) and (7) of the Act (R. 96–97, 112–119). The court below also concluded that Section 8 (b) (4) (D) was not repugnant to the First, Fifth and Thirteenth Amendments to the Constitution of the United States (R. 89–91, 119), and that injunctive relief in the premises was appropriate under Section 10 (l) of the Act (R. 91–100, 119–120). Accordingly, it rejected appellants' defenses and, after appellants failed to comply with the Board's Section 10 (k) decision and determination, issued an order enjoining appellants from (R. 121–123):

> Engaging in, or inducing or encouraging the employees of Stone and Webster, Westinghouse, or any other employers, to engage in a strike or concerted refusal in the course of their employment, to use, manufacture, process, transport or otherwise handle or work on any goods, articles or materials or commodities belonging to or utilized by Stone and Webster, Westinghouse or any other employer engaged on the construction project for Edison at Redondo Beach, California, or to perform services for Stone and Webster, Westinghouse, or any other employer on said project, where an object thereof is to force or require Westinghouse and/or Stone and Webster to assign the work of installing steam turbine generators

to members of respondent Millwrights rather than to employees of Westinghouse who are now members of Machinists, or any other labor organization, unless respondent Millwrights is certified by the Board as the bargaining representative for the employees performing such work.

SUMMARY OF ARGUMENT

The instant case was initiated pursuant to Section 10 (l) of the Act. Section 10 (l) empowers the district courts of the United States to grant, upon application of the Board, such interlocutory injunctive relief as is just and proper pending determination by the Board of unfair labor practice charges filed under Section 8 (b) (4) of the Act, where there is reasonable cause to believe that such unfair labor practices are being committed. The court below properly found that there was reasonable cause to believe that appellants by orders, directions, and instructions, in violation of Section 8 (b) (4) (D) of the Act, induced and encouraged the employees of Stone and Webster, Westinghouse, and other employers to engage in a strike or a concerted refusal to transport or handle or work on Westinghouse products or to perform services for their employers, an object thereof being to compel Westinghouse to assign the installation of steam turbine generators at the Redondo station to members of Millwrights rather than to members of Machinists.

The court below properly found that there was reasonable cause to believe that appellants' conduct charged as violative of the Act and directed against the business operations of Edison, Stone and Webster,

and Westinghouse, affected commerce within the meaning of Section 2 (6) and (7) of the Act.

Neither Section 8 (b) (4) (D) of the Act, nor the order of the court below enjoining such conduct on the part of appellants, violates the constitutional guaranty against involuntary servitude. The Act and the order merely prohibit labor organizations or their agents from engaging in strikes or inciting employees to engage in strikes or concerted refusals to perform services for the stated object. Neither the Act nor the order of the court below requires employees to continue working against their will.

The Act, insofar as it enjoins picketing where used to induce or encourage employees to engage in a strike or concerted refusal to perform services for the objects enumerated therein, does not violate the constitutional guaranty of free speech but represents a valid exercise of the Congressional power over commerce. Congress may, in order to narrow the area of industrial conflict and protect the public interest in the free flow of commerce, illegalize picketing where it is utilized to conscript employees in order to bring pressure to bear upon an employer to assign work to members of one union rather than to members of another union. Congress may prohibit conduct, including picketing for purposes it finds inimical to the public welfare without transgressing constitutional limitations.

Section 8 (b) (4) (D) of the Act does not violate the Fifth Amendment of the Constitution because it curtails appellants' liberty to exert pressure on employers through employees to compel the contracting

of work to their members rather than to members of another group. Congress may regulate or prohibit labor practices which it finds injurious to the public welfare.

Section 10 (l) of the Act applies to charges filed under Section 8 (b) (4) (D) of the Act, and the district court did not prematurely entertain the injunction proceeding or consider matters not properly before it. Relief under Section 10 (l) of the Act is supplementary and not subordinate to the procedures under Section 10 (k) of the Act and proceedings under both sections may be processed concurrently. Conduct engaged in after a Section 10 (k) proceeding and relevant and material to the dispute involved is admissible in support of a complaint under Section 8 (b) (4) (D) without a further Section 10 (k) hearing.

The injunction order of the district court cannot be successfully challenged on the grounds that it is vague and indefinite or that it fails to embody the provisions of Section 8 (c) of the Act. The order couched in statutory language furnishes an adequate guide as to what conduct is proscribed and is as specific as the nature of the problem permits. The protection which Section 8 (c) of the Act extends to the expression of views, argument, or opinion which contain no threat of reprisal or force or promise of benefit does not require modification of the order entered by the district court. The provisions of Section 8 (c) of the Act do not exempt from prohibition the inducement or encouragement to en-

880610—50——3

gage in a strike or a concerted refusal to work for the objects proscribed by Section 8 (b) (4) of the Act.

ARGUMENT

Preliminary statement: The statuory scheme pursuant to which the present proceedings were initiated in the court below

The proceedings before the court below were similar to those reviewed by this Court in the *Printing Specialties* case.[6] As in that case, these proceedings, initiated pursuant to the provisions of Section 10 (l) of the Act, resulted in the issuance of a temporary injunction by the lower court restraining the unfair labor practices charged pending their final determination by the Board.

The Act empowers the Board, upon the filing of appropriate charges, to issue, hear and determine complaints that employers or labor organizations have engaged in unfair labor practices within the meaning of the Act (Section 10 (a), (b) and (c) of the Act). In addition, in respect to charges under Section 8 (b) (4) (D) of the Act, the unfair labor practice section involved here, the Board is empowered and directed to hear and determine the dispute out of which the unfair labor practice arose (Section 10 (k) of the Act; see *supra,* p. 4). Proceedings of this character are necessarily protracted and time consuming. Congress believed that certain unfair labor practices committed by labor organizations gave, or tended to give, rise to such serious and unjustifiable interrup-

[6] *Printing Specialties and Paper Converter's Union, Local 388, A. F. L.* v. *LeBaron*, 171 F. 2d 331 (C. A. 9).

tions to commerce that their continuation, pending adjudication by the Board, would result in irreparable injury to the purposes of the Act.[7] Accordingly, in order to prevent such a frustration of the statutory purpose, Congress provided in Section 10 (l) of the Act that—

> Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (A), (B), or (C) of section 8 (b), the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any district court of the United States (including the District Court of the United States for the District of Columbia) within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law: *Provided further,* That no temporary restraining order shall be issued without notice unless a petition alleges

[7] S. Rep. No. 105, 80th Cong., 1st Sess., pp. 8, 27.

> that substantial and irreparable injury to the charging party will be unavoidable and such temporary restraining order shall be effective for no longer than five days and will become void at the expiration of such period. Upon filing of any such petition the courts shall cause notice thereof to be served upon any person involved in the charge and such person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony: *Provided further,* That for the purposes of this subsection district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organization a party to the suit. *In situations where such relief is appropriate the procedure specified herein shall apply to charges with respect to section 8 (b) (4) (D).* [Emphasis added.]

The injunctive relief contemplated in Section 10 (l) is interlocutory to the final determination of the matter by the Board and is limited to such time as may expire before the Board issues its final order with respect to the unfair labor practices charged. As in the case of traditional equity practice with respect to interlocutory relief,[8] the prerequisite to the

[8] *Bowles* v. *Montgomery Ward & Co.*, 143 F. 2d 38, 42 (C. A. 7); *Colorado Eastern R. Co.* v. *Chicago, etc., Ry. Co.*, 141 Fed. 898,

granting of the relief contemplated by Section 10 (l) of the Act is a finding by the district court that there is reasonable cause to believe that a violation of the Act, as charged, has been committed and that equitable relief would be "just and proper." The court is not called upon to decide, as appellants suggest, by a preponderance of the evidence (Br., pp. 22, 25), whether in fact the charges are true or whether in fact a violation of the Act affecting commerce has been committed. The ultimate determination of the truth of the charges and the existence of a violation of the Act affecting commerce is reserved exclusively to the Board, subject to review by the circuit courts of appeals pursuant to Section 10 (e) and (f) of the Act.[9]

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901 (C. A. 8); *Sinclair Refining Co.* v. *Midland Oil Co.*, 55 F. 2d 42, 45 (C. A. 4); *Northwestern Stevedoring Co.* v. *Marshall*, 41 F. 2d 28, 29 (C. A. 9); *City of Louisville* v. *Louisville Home Telephone Co.*, 279 Fed. 949, 956 (C. A. 6); *United States* v. *Parrott*, 27 Fed. Cas. 417, 430, 435 (C. C. N. D. Calif.); *Eastern Texas R. Co.* v. *Railroad Commission*, 242 Fed. 300, 305 (D. C. W. D. Tex.).

[9] *Printing Specialties and Paper Converters Union, Local 388, A. F. L.* v. *LeBaron*, 171 F. 2d 331 (C. A. 9); *Building and Construction Trades Council* v. *LeBaron* (C. A. 9), decided June 30, 1949, 24 L. R. R. M. 2367; *United Brotherhood of Carpenters and Joiners of America* v. *Sperry*, 170 F. 2d 863 (C. A. 10); *Douds* v. *Local 1250, Retail Wholesale Dept. Store Union*, 170 F. 2d 695 (C. A. 2); *Shore* v. *Building and Construction Trades Council*, 173 F. 2d 678 (C. A. 3); *LeBaron* v. *Kern County Farm Labor Union*, 80 F. Supp. 151, 153, 158 (D. C. S. D. Calif.); *Brown* v. *Roofers and Waterproofers Union, Local No. 40*, 86 F. Supp. 50 (D. C. N. D. Calif.); *Douds* v. *Teamsters Union, Local 294*, 75 F. Supp. 414 (D. C. N. D. N. Y.); *Evans* v. *International Typographical Union*, 76 F. Supp. 881 (D. C. S. D. Ind.); *Styles* v. *Local 74, United Brotherhood of Carpenters*, 74 F. Supp. 499 (D. C. E. D. Tenn.); *Douds* v. *Wine, Liquor & Distillery Workers Union, Local No. 1*, 75 F. Supp. 447 (D. C. S. D. N. Y.).

The district court in this case did not, as appellants argue (Br., pp. 23–27), abdicate to appellee, the Board's Regional Director, its duty to find reasonable belief of a violation of the Act affecting commerce, any more than it did in the *Printing Specialties* case (*supra,* p. 14). On the contrary, the lower court makes plain, both in its opinion (R. 85, 91–93, 96–99) and its findings of fact and conclusions of law (R. 115, 119), its independent conclusion within the statutory scheme that the belief that a violation of the Act as charged had occurred was reasonable. Nor did the court err, as appellants claim (Br., pp. 24–25), in citing the Board's Section 10 (k) decision and determination (see *supra,* p. 9) as confirmation of the existence of reasonable cause to believe the truth of the unfair labor practice charge (see R. 95). It is clear that under the statutory scheme, the Board's decision determined the illegality of appellants' claim to the generator installation work, the work in dispute (see R. 240–241).

I

The district court properly found that there was reasonable cause to believe that appellants have, as charged, engaged in unfair labor practices in violation of Section 8 (b) (4) (D) of the Act

Section 8 (b) (4) (D) of the Act provides that:

> (b) It shall be an unfair labor practice for a labor organization or its agents—
>
> * * * * *
>
> (4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process,

transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is:

* * * * *

(D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work. * * *

The substantially uncontradicted evidence summarized above fully supports the holding of the court below (R. 117) that there is, and appellee had, reasonable cause to believe that:

(e) Respondents on or about February 2, 1949, and at all times since that date, have, by orders, directions, and instructions, induced and encouraged employees of Stone and Webster, Westinghouse and other employers engaged at the Redondo Beach station to engage in a strike or concerted refusal in the course of their employment to transport or otherwise handle or work on Westinghouse products or to perform services for their employers in connection with the Redondo Beach project, an object thereof being to force or require Westinghouse to assign the work of installing the steam turbine generators at the Redondo Beach station to members of respondent Millwrights rather than to the employees of Westinghouse who are now members of the Machinists.

It is clear, we submit, that appellants' conduct, summarized above, falls squarely within the proscription of Section 8 (b) (4) (D) of the Act and constitutes an unfair labor practice within the meaning of that section. Plainly, appellants did, in the language of Section 8 (b) (4) (D) of the Act—

> * * * engage in, or * * * induce or encourage [by orders, directions, and instructions] the employees of any employer [Stone and Webster, Westinghouse and other contractors on the Redondo station project] to engage in, a strike or concerted refusal in the course of their employment to * * * transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services [for Stone and Webster, Westinghouse and other contractors on the Redondo station], where an object thereof is: * * * (D) forcing or requiring any employer [Westinghouse] to assign particular work [the installation of steam turbine generators at the Redondo station] to employees in a particular labor organization [members of Millwrights] * * * rather than to employees in another labor organization [members of Machinists] unless such employer [Westinghouse] is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work.

Appellants' conduct would be lawful only were Westinghouse failing to conform to an order or certification of the Board determining Millwrights to be the bargaining representative for the employees of Westinghouse performing the work in dispute. Appellants make no suggestion that such is the fact.

Although appellants at two places in their brief (see pp. 6, 13–14) admit, as they conceded at the Section 10 (k) hearing before the Board (see R. 245–246, 248–249) and as the facts indisputably show (see R. 30–36, 79–81, 160–163, 194–195, 206–208, 213), that the work stoppages herein were called to force the assignment to Millwrights of the work being done by Machinists, they argue at another point in their brief (p. 32) that the work stoppages had a different object, that of "breaking up" an illegal closed-shop between Westinghouse and Machinists which barred their members from employment. Assuming, contrary to the record (see R. 246–247, 140–141, 143–147, 156–157, 162, 163, 166–167, 169), that Westinghouse hired members of Machinists because of a closed-shop agreement with the latter organization or to encourage membership in it, appellants nevertheless would not be justified in their conduct. Clearly, at least *an* object of appellants' action was to force the assignment of the generator installation work to members of Millwrights rather than to members of Machinists (see R. 248–249, 246). That was enough to bring it within the proscription of Section 8 (b) (4) (D); it need not have been the sole object. This interpretation is made plain by the wording of Section 8 (b) (4) as well as by the legislative history of the section,[10] and has received judicial sanction. *N. L. R. B.*

[10] Senator Taft, a sponsor of the Act, explained the application of the section as follows (Daily Cong. Rec. 7001 (June 12, 1947)):

"Section 8 (b) (4), relating to illegal strikes and boycotts, was amended in conference by striking out the words 'for the purpose of' and inserting the clause 'where an object thereof is.' Obviously the intent of the conferees was to close any loophole which

v. *Wine, Liquor & Distillery Workers Union, Local 1, etc.,* 178 F. 2d 584 (C. A. 2). Moreover, the fact that Westinghouse and Machinists may have violated the Act, would not have entitled appellants also to engage in conduct proscribed by the Act. See *Amalgamated Utility Workers* v. *Consolidated Edison Co.,* 309 U. S. 261; *N. L. R. B.* v. *Fickett-Brown Mfg. Co.,* 140 F. 2d 883 (C. A. 5). If their contention were right and Westinghouse and Machinists had violated the Act, appellants' course was themselves to obey the provisions of the Act and call to the Board's attention by appropriate charges the transgression of the others.[11]

Appellants also assert that the decisions of the Board in the *Pure Oil, Santa Ana Lumber, DiGiorgio Wine, Grauman,* and *Conway's Express* cases under Section 8 (b) (4) (A) of the Act, the secondary boycott section, cast doubt on whether a violation of Section 8 (b) (4) (D) of the Act, the jurisdictional dispute section, has actually occurred in the instant case and argue that for that reason injunctive relief should have been withheld by the court

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would prevent the Board from being blocked in giving relief against such illegal activities simply because one of the purposes of such strikes might have been lawful."

[11] On May 9, 1949, after the initiation of the injunction proceedings in the court below, appellants for the first time filed charges with the Board alleging that Westinghouse and Machinists were engaging in violations of Section 8 (a) (3) and Section 8 (b) (2) of the Act, the sections prohibiting discrimination in regard to employment because of union membership or non-membership. On June 8, these charges were administratively dismissed for lack of evidential support, and, on appeal to the General Counsel of the Board, the dismissals were, on August 24, sustained. *Westinghouse Electric Corporation,* Case No. 21–CA–448; *International Association of Machinists,* Case No. 21–CB–156.

below (Br., pp. 32–34). These contentions are without merit. The cited cases treat with a different subsection, a finding of a violation of which requires as a prerequisite a showing of secondary as distinct from primary action. Such is not the case in respect to violations of the subsection here under review.

Appellants also refer to the Board's Section 10 (k) decision and determination in the *Ship Scaling* case, apparently implying that the dismissal of that case by the Board on the ground the dispute was over wages and not over the assignment of work indicates that the Board likewise should have dismissed this case (Br., p. 34). But the Board here, in proceedings identical to those in the *Ship Scaling* case, has determined that appellants' object in the instant case unlike the object in the *Ship Scaling* case, was to force the assignment to Millwrights of the work being done by Machinists, an object unlawful under the Act (R. 238–241).[12] The correctness of the Board's decision in this regard depends on the record in this case, not on the correctness of its findings on a different record in the *Ship Scaling* case.

Accordingly, a clear basis for granting the relief required under the Act is established unless, as appellants argue, (1) the unfair labor practices do not

[12] Appellants' suggestion (Br., p. 26) that the administrative dismissal of a charge filed under Section 8 (b) (4) (A) of the Act, the secondary boycott section, and predicated on the same incidents, is inconsistent with a finding of merit in the instant charge under Section 8 (b) (4) (D), the jurisdictional dispute section, requires only brief comment. The two sections treat with different violations; the first involves secondary action to bring about a boycott, the second involves either primary or secondary conduct to force the assignment of work to one group rather than to another. Thus, dismissal of the Section 8 (b) (4) (A) charge could not determine the validity of the Section 8 (b) (4) (D) charge.

affect commerce within the meaning of the Act, or (2) appellants' conduct is constitutionally privileged; or (3) the provisions of Section 10 (l) of the Act do not apply to violations charged under Section 8 (b) (4) (D) of the Act; or (4) the district court acted prematurely in the matter. We discuss these contentions below.

II

There is, and the district court properly found, reasonable cause to believe that the unfair labor practices with which appellants are charged affect commerce within the meaning of the Act

Appellants argue (Br., pp. 22–23, 37) that (1) the alleged unfair labor practices do not affect commerce within the meaning of the Act because the dispute arose out of a "purely local" building enterprise, and (2) the district court in concluding that there was reasonable cause to believe that the alleged unfair labor practices affected commerce disregarded the "preponderance of evidence" and merely accepted the Regional Director's judgment as to jurisdiction as a substitute for proof. These contentions are clearly without merit.

The alleged unfair labor practices directly affected the business operations of Edison, Westinghouse and Stone and Webster. The record discloses (*supra,* pp. 5–7) that during the year 1948, Edison, in the course of its business operations, purchased raw materials valued at in excess of three million dollars, of which approximately two-thirds came from sources outside the State of California. Approximately 39 percent of Edison's total output of electrical energy goes to

instrumentalities of interstate commerce and concerns engaged in interstate commerce, such as oil refineries, rubber companies, steel plants and aircraft manufacturers. During 1948, approximately 25 percent of the total power utilized by Edison originated from outside the State of California.

During 1948, Westinghouse purchased raw materials valued at in excess of two million dollars, of which approximately 50 percent originated from sources outside the State of Pennsylvania where Westinghouse is located. During the same period Westinghouse sold substantial quantities of electrical apparatus to customers located outside Pennsylvania. The three generators shipped by Westinghouse from Pennsylvania to the Redondo station in California were valued at approximately $4,800,000.

Stone and Webster is engaged in construction activities throughout the United States and in many foreign countries. At the end of 1948 its construction work then in progress had an estimated completed value of one-third billion dollars.

Finally, of the estimated $38,000,000 cost for constructing and equipping the Redondo station, $12,700,000 was for equipment to be transported from outside California to the station.

Upon the foregoing facts, it is apparent that Edison, Westinghouse and Stone and Webster are engaged in interstate commerce within the coverage of the Act.[13] The activities of appellants in calling

[13] The Board in other proceedings before it has found that Edison and Westinghouse are engaged in commerce within the meaning of the Act. *Westinghouse Electric Corporation*, 72 N. L. R. B. 60; *Southern California Edison Co.*, 70 N. L. R. B. 80.

a work stoppage at the Redondo station plainly tended to impede and disrupt the interstate operations not only of the concerns directly involved but also of the numerous instrumentalities of interstate commerce and concerns engaged in interstate commerce which Edison supplies with electrical energy. The application of the Act to activities having, or tending to bring about, that result, no matter how "local" the project where they occur, cannot in the light of authoritative judicial pronouncements be doubted. *N. L. R. B.* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 41–42; *Consolidated Edison Co.* v. *N. L. R. B.*, 305 U. S. 197, 219–222; *Polish National Alliance* v. *N. L. R. B.*, 322 U. S. 643, 647–648; *United Brotherhood of Carpenters and Joiners of America* v. *Sperry*, 170 F. 2d 863 (C. A. 10); *International Brotherhood of Electrical Workers* v. *N. L. R. B.*, — F. — 2d (C. A. 2), decided February 24, 1950, 25 L. R. R. M. 2449; cf. *Wickard* v. *Filburn*, 317 U. S. 111; *Mandeville Island Farms, Inc.* v. *American Crystal Sugar Co.*, 334 U. S. 219; *United States* v. *Women's Sportswear Association*, 336 U. S. 460.[14] Accordingly, the court below properly concluded (R. 100) that there was reasonable cause to believe that the activities of appellants, which

[14] In support of their contention that the coverage of the Act does not extend to their activities here under consideration, appellants rely solely on *Industrial Association* v. *United States*, 268 U. S. 64. In view of the more recent pronouncements of the Supreme Court upon the scope of Congressional regulatory power over interstate commerce, cited above, appellants' reliance upon that case must be rejected as a "reversion to conceptions formerly held but no longer effective to restrict * * * Congress' power * * *." *Mandeville Island Farms* case, *supra*, at p. 229.

presented "the threat of a strike by hundreds of persons on a construction and installation which undeniably has the character of interstate commerce, from which great harm can flow, not only to the employers, but to the community which the Edison Company serves," affect commerce within the meaning of the Act.

III

Section 8 (b) (4) (D) and the order of the court below based thereon do not invade any constitutional rights of appellants

Appellants assert (Br., p. 10) that if Section 8 (b) (4) (D) enjoins a union and its members from striking to win from rival union or from nonunion employees contested work opportunities or from refusing to perform services for the employer in that situation, then the section is repugnant to the First, Fifth and Thirteenth Amendments of the Constitution.

The claim that Section 8 (b) (4) (D) and the order of the court below subjects workers to involuntary servitude prohibited by the Thirteenth Amendment is, as this Court has observed with respect to Section 8 (b) (4) (A), "patently groundless." *Printing Specialties and Paper Converters Union, Local 388, A. F. L.* v. *LeBaron,* 171 F. 2d 331. Accord: *N. L. R. B.* v. *Wine, Liquor & Distillery Workers Union, Local 1, etc.,* 178 F. 2d 584 (C. A. 2); *N. L. R. B.* v. *Local 74, United Brotherhood of Carpenters and Joiners of America,* — F. 2d — (C. A. 6), decided April 4, 1950.

Neither the Act nor the order of the court below prohibits employees from ceasing to work for any reason. Indeed, the statute expressly states that nothing in it shall be construed to require an individ-

ual employee to work without his consent or to enjoin him from quitting his employment.[15] The prohibition contained in Section 8 (b) (4) (D) is aimed at labor organizations and makes it an unfair labor practice for a labor organization or its agents to engage in the proscribed conduct. Accordingly, it must be said here, as the Supreme Court said of a contention similar to that advanced by appellants, "The facts afford no foundation for the contention that any action of the State has the purpose or effect of imposing any form of involuntary servitude." *International Union, U. A. W., A. F. of L., Local 232* v. *Wisconsin Employment Relations Board,* 336 U. S. 245, 251.

The contention urged by appellants that Section 8 (b) (4) (D) insofar as it enjoins strikes for the stated objective or picketing to induce concerted stoppages of work for that objective such as occurred here invades the freedom of speech and assemblage guaranteed by the First Amendment cannot be reconciled with controlling decisions. The statute, as this Court has observed, "broadly sweeps within its prohibition an entire pattern of industrial warfare

[15] Section 502 of the Act provides:

"Nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent; nor shall the quitting of labor by an employee or employees in good faith because of abnormally dangerous conditions for work at the place of employment of such employee or employees be deemed a strike under this Act."

deemed by Congress to be harmful to the public interest." *Printing Specialties* case, *supra,* at p. 334. The authority of Congress to mark the limits of tolerable industrial conflict in the public interest and, in order to effectuate that purpose, to regulate and curtail the right to strike or to picket peacefully cannot be seriously challenged. In *International Union, U. A. W., A. F. of L., Local 232* v. *Wisconsin Employment Relations Board,* 336 U. S. 245, the Supreme Court reaffirmed the principle that the right to strike enjoys no absolute constitutional protection and because of its serious impact upon the public interest is "vulnerable to regulation" when that interest requires limitation of the area of permissible industrial conflict. Accord: *N. L. R. B.* v. *Wine, Liquor and Distillery Workers Union, Local 1, etc.,* 178 F. 2d 584 (C. A. 2); *N. L. R. B.* v. *Local 74, United Brotherhood of Carpenters and Joiners of America,* — F. 2d — (C. A. 6), decided April 4, 1950. In *Giboney* v. *Empire Storage and Ice Company,* 336 U. S. 490, the Supreme Court declared that the Constitution has not so greatly impaired the Nation's power to govern that it could not, in order to keep the channels of trade wholly free and open, set the limits of permissible contest open to industrial combatants and, in order to achieve that purpose, place restrictions upon peaceful picketing. Accord: *International Brotherhood of Electrical Workers* v. *N. L. R. B.,* — F. 2d —(C. A. 2), decided February 24, 1950, 25 L. R. R. M. 2449. In the light of these authorities we believe that Congress may, to protect the public interest, prohibit as it has in Section 8 (b) (4) (D) the conscription of employees by unions to force an employer to yield to

union demands for the assignment of work as between two rival labor organizations.

Appellants' further contention, that Section 8 (b) (4) (D) in conjunction with Section 10 (k) of the Act is invalid because, they assert, it curtails the liberty of contract guaranteed by the Fifth Amendment, must also be rejected. It is difficult to perceive how the Act interferes with this freedom; the statute simply prohibits strikes and the inducement of strikes in support of jurisdictional disputes as defined in the Act. But, in any event, the argument rests upon a conception of the due process clause which the Supreme Court, in its own words, has "deliberately discarded." In *Lincoln Federal Labor Union* v. *Northwestern Iron and Metal Company,* 335 U. S. 525, the petitioner union urged upon the court the proposition that state prohibitions against closed-shop contracts were violative of due process in that they restricted freedom of contract. In support of this contention the union cited various cases, including *Wolff Packing Co.* v. *Court of Industrial Relations,* 262 U. S. 522, upon which appellants here rely. The Court, after declaring that these cases represented a "due process philosophy that has been deliberately discarded," said (at p. 536):

> * * * This Court beginning at least as early as 1934, when the *Nebbia* case was decided, has steadily rejected the due process philosophy enunciated in the *Adair-Coppage* line of cases. In doing so it has consciously returned closer and closer to the earlier constitutional principle that states have power to legislate against what

are found to be injurious practices in their internal commercial and business affairs, so long as their laws do not run afoul of some specific federal constitutional prohibition, or of some valid federal law. See *Nebbia* v. *New York, supra* at 523–524, and *West Coast Hotel Co.* v. *Parrish, supra* at 392–395, and cases cited. Under this constitutional doctrine the due process clause is no longer to be so broadly construed that the Congress and state legislatures are put in a strait jacket when they attempt to suppress business and industrial conditions which they regard as offensive to the public welfare.

IV

The provisions of Section 10 (l) of the Act properly were construed to apply to the charges under Section 8 (b) (4) (D) of the Act herein; the district court did not prematurely enter the injunction or consider matters not properly before it

Appellants argue (Br., p. 27) that by making Section 10 (l) of the Act apply to charges under clause (D) of Section 8 (b) (4) of the Act separately from the other clauses of the section and when "appropriate" (see *supra,* pp. 15–16), Congress intended a different standard of proof to be required by the courts in granting injunctive relief in respect to cases under the latter clause of Section 8 (b) (4) than in respect to charges under clauses (A), (B), and (C) of

[16] As already stated (pp. 15–16), Section 10 (l) after providing that it shall be mandatory for the Board's representative to apply to the appropriate district court for injunctive relief whenever a preliminary investigation discloses that a complaint should issue on charges under clauses (A), (B), and (C) of Section 8

the section.[16] Appellants concede that reasonable cause to believe that the violation charged has occurred is sufficient to warrant Section 10 (l) injunctive relief in respect to cases under clauses (A), (B), and (C) of Section 8 (b) (4). However, they argue, without citing judicial or legislative precedent, that in specifying that the provisions of Section 10 (l) shall apply to charges under clause (D) of Section 8 (b) (4) "in situations where such relief is appropriate," Congress intended the courts to grant injunctive relief in cases arising under that clause only when it is shown by a *preponderance* of the evidence that the misconduct charged has occurred, that it affects commerce within the meaning of the Act, that there is no adequate remedy at law, and that great and irreparable injury is threatened (Br., p. 27). Such a construction of the application of Section 10 (l) to Section 8 (b) (4) (D) cases disregards traditional equity standards for granting statutory interlocutory injunctive relief (see *supra,* pp. 14–17), the plain meaning of the words in Section 10 (l), and the legislative history of the section.

Congress, in Section 10 (l), made it mandatory on the Board in the public interest to seek injunctive relief in respect to all charges under clauses (A), (B), and (C) of Section 8 (b) (4) believed after investigations to have merit and to warrant the issuance of a complaint. However, in respect to Section 8 (b) (4) (D) charges, Congress desired to grant the Board

(b) (4), and specifying procedures to be followed in connection with such application, provides in the last sentence that when such relief is "appropriate" the procedures of the section "shall apply" to charges under clause (D) of Section 8 (b) (4).

discretion to decide when an application for injunctive relief is appropriate to effectuate the statutory scheme and the public policy. This is made clear in the Senate Report on this provision in Section 10 (l).[17] As stated in the report:

> Experience under the National Labor Relations Act has demonstrated that by reason of lengthy hearings and litigation enforcing its orders, the Board has not been able in some instances to correct unfair labor practices until after substantial injury has been done. Under the present act the Board is empowered to seek interim relief only after it has filed in the appropriate circuit court of appeals its order and the record on which it is based. Since the Board's orders are not self-enforcing, it has sometimes been possible for persons violating the act to accomplish their unlawful objective before being placed under any legal restraint and thereby to make it impossible or not feasible to restore or preserve the status quo pending litigation.
>
> In subsections (j) and (l) to section 10 the Board is given additional authority to seek injunctive relief. * * *
>
> Section 10 (l) makes it mandatory upon the Board to petition for injunctive relief in the case of strikes or boycotts that are alleged to constitute unfair labor practices within the meaning of paragraphs (A), (B), and (C) of section 8 (b) (4). * * * *In the case of strikes and boycotts involving jurisdictional disputes, the same procedure may be used if appropriate; injunctive relief in such cases is*

[17] S. Rep. No. 105, 80th Cong., 1st Sess., p. 27.

made discretionary because it is anticipated that the separate machinery provided in section 10 (k) for settling such disputes will generally suffice. [Emphasis added.]

Clearly, under the circumstances of the instant case injunctive relief was appropriate and in accord with the statutory scheme, as the district court found (R. 91–95, 99–100). Appellants pulled 650 workers off the job in support of their claim to the work of the two Machinists; brought construction operations at the Redondo station to a practical standstill for a period of over a week; and threatened seriously to disrupt the interstate business of Edison, Westinghouse, and Stone and Webster. Thereafter, they refused to relinquish their claim to the disputed work notwithstanding the Board's determination that their demands were unlawful and continued to threaten to engage in further strike action and to disrupt the businesses of Edison, Westinghouse, and Stone and Webster if Westinghouse gave effect to the Board's determination and restored the two Machinists to work. Unquestionably the court below in the "balancing of interests" properly concluded (R. 99–100) that, in order to avoid "great harm" to the "employers" and "to the community which the Edison Company serves," injunctive relief was appropriate and in the public interest. In proceedings like these the propriety of injunctive relief turns not upon traditional equity criteria applicable in suits between private parties, but upon the necessity for effectuating the statutory policy. *Hecht Co.* v. *Bowles,* 321 U. S. 321, 331. It is well settled that where Congress

sets the standards for the issuance of injunctions, those standards, and no others, need be satisfied to obtain injunctive relief. *S. E. C.* v. *Jones,* 85 F. 2d 17 (C. A. 2); *S. E. C.* v. *Torr,* 87 F. 2d 446 (C. A. 2); *American Fruit Growers* v. *United States,* 105 F. 2d 722 (C. A. 9); *United States* v. *Adler's Creamery, Inc.,* 110 F. 2d 482 (C. A. 2); *Douds* v. *Teamsters Union, Local 294,* 75 F. Supp. 414, 417–418 (D. C. N. D. N. Y.); *Evans* v. *International Typographical Union,* 76 F. Supp. 881, 885 (D. C. S. D. Ind.).

Appellants further contend (Br., p. 28) that the district court erred in entertaining the petition for injunctive relief under Section 10 (l) prior to the expiration of the 10 days specified in the Board's decision for compliance with its Section 10 (k) determination of the dispute (see R. 241), since, under Section 10 (k), compliance with the Board's determination would terminate the matter before the Board (see *supra,* p. 4). However, as the court below noted (R. 95), and the only court of appeals to consider the matter agrees (see *Herzog* v. *Parsons,* — F. 2d — (C. A. D. C.), decided February 20, 1950, 25 L. R. R. M. 2413), the provisions of Section 10 (k) present no impediment to the pressing of a Section 10 (l) injunction proceeding before a district court concurrently with the processing of a Section 10 (k) proceeding before the Board; the court proceeding as well as the Board proceeding can be terminated upon compliance with the Board's determination or a voluntary settlement of the dispute. In any event, appellants cannot claim that they were in any respect

prejudiced in the instant case. As appellants concede (Br., p. 28) and the court's opinion discloses (R. 95–96), the district court delayed decision in the matter until the 10-day period for compliance with the Board's determination had expired.

Nor did the court below err in considering appellants' manifested intent to continue the unlawful exertion of pressure on Westinghouse to compel the assignment of the disputed work to Millwrights evinced by the work stoppage of April 11, 1949 (see *supra,* p. 9). Evidence of that stoppage was admissible even though it occurred after the Section 10 (k) hearing before the Board. As stated above, a Section 10 (k) hearing and determination by the Board is not a prerequisite to a court proceeding under Section 10 (l). Moreover, the April 11 work stoppage and the February 2 strike (see *supra,* pp. 8–9) were over the same disputed work, the installation of generators, not over different work assignments each, requiring a Section 10 (k) proceeding. Accordingly, it was proper for the court to consider the most recent evidence of appellants' unlawful conduct in the Section 10 (l) proceeding below, as the Board may likewise do in its complaint case. See *National Licorice Co.* v. *N. L. R. B.,* 309 U. S. 350.

V

The injunction order entered by the court below is proper and valid

Appellants assert (Br., pp. 29–32, 34) that the order of the court below insofar as it enjoins them from "inducing or encouraging" the employees of

the named employers to engage in a strike for the prohibited objective is so vague and indefinite that it is impossible to ascertain what conduct is allowed or forbidden and is therefore invalid. The order is phrased in the language of the Act. This Court has previously rejected an attack upon that language based on the claim that it was void because of vagueness and uncertainty and held that the words induce and encourage are "sufficiently clear to enable the Board and the courts to administer it." Accord: *N. L. R. B.* v. *Wine, Liquor and Distillery Workers Union, Local 1, etc.,* 178 F. 2d 584 (C. A. 2). The language of Section 8 (b) (4) (D) and the order of the court below are as specific as the nature of the problem permits and as is reasonably practicable to effectuate the congressional intent. The courts under the Act have, for example, repeatedly enforced orders which enjoin employers from restraining, coercing or interfering with employees in the exercise of their rights under the Act. Surely, the words "induce or encourage" viewed against the purpose of the statute afford as practicable and feasible a guide to appellants as the words "restrain, interfere with and coerce" afford. Cf. *Hague* v. *C. I. O.,* 307 U. S. 496, 517.

Respondents further claim that the court below erred in failing to qualify the injunction in the terms of Section 8 (c) of the Act. Section 8 (c) of the Act, literally read, exempts from the unfair labor practice provisions of the Act the expression of views, arguments or opinion if such expression contains no

threat of reprisal or force or promise of benefit.[18] However, this Court, the Second Circuit Court of Appeals, the Tenth Circuit Court of Appeals and the Board have held, on different reasoning, that Section 8 (c) does not protect the type of activities here under consideration. *Printing Specialties and Paper Converters Union, Local 388, A. F. L.* v. *LeBaron,* 171 F. 2d 331 (C. A. 9); *United Brotherhood of Carpenters and Joiners of America* v. *Sperry,* 170 F. 2d 863 (C. A. 10); *International Brotherhood of Electrical Workers* v. *N. L. R. B.,* — F. 2d (C. A. 2), decided February 24, 1950, 25 L. R. R. M. 2449; *United Brotherhood of Carpenters and Joiners of America,* 81 N. L. R. B. 802.

Appellants also argue (Br., p. 38) that the injunction is improper because it is not limited to appropriate *pendente lite* relief, but for all practical purposes finally determines the issues presented in the charge. This is so, appellants assert, because during the pendency of the injunction and under its protection the project where the dispute arose will in all likelihood be completed with the result that by the time the Board can decide the merits of the charge the dispute will have become moot. Congress undoubtedly was aware that the injunctive relief afforded by Section 10 (l) would in some instances have the result of which appellants complain. Against this Congress weighed

[18] Section 8 (c) provides that:

"The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit."

the necessity in respect to certain types of unfair labor practices for guarding against substantial and serious injury to the public interest and for promptly eliminating undesirable obstructions to the free flow of commerce. Congress felt that the relatively slow procedures of Board hearing and order were inadequate to achieve that result and, accordingly, provided for interim injunctive relief. Although from a practical standpoint such injunctive relief might in certain circumstances render a controversy moot by the time the Board handed down its decision, Congress concluded that on balance the public interest nevertheless required speedy injunctive relief where there was a reasonable probability that certain types of unfair labor practices were being committed. S. Rep. No. 105, 80th Cong., 1st Sess., pp. 8, 27.

CONCLUSION

It is respectfully submitted that the order of the court below is proper and valid in all respects and that it should be affirmed.

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